

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Plaintiff, a California inmate at the Salinas Valley State Prison in Soledad, filed a pro se civil rights complaint under 42 U.S.C. § 1983, challenging the conditions of his confinement. On April 22, 2011, the Court founds the complaint, liberally construed, stated cognizable claims and ordered service on Defendants Fox, Bright and Sepulveda.<sup>1</sup> (Docket No. 6.) Defendants were directed to file a motion for summary judgment or other dispositive motion with respect to the claims in the amended complaint found to be cognizable no later than sixty days from the date of the order. (Id.) The summonses for the Defendants were returned executed on May 11, 2011. (Docket Nos. 16, 17 & 18.)

<sup>1</sup> The Court dismissed Defendants State of California, Gov. J. Brown, Warden Hedgpeth and Associate Warden G. Ponder from this action as the complaint contained no allegations against them. (See Docket No. 6.)

## DISCUSSION

**A. Motion for Preliminary Injunction**

Plaintiff has filed a motion for preliminary injunction , a supplement thereto, and a motion for emergency relief, which the Court construes as a motion for preliminary injunction. (Docket Nos. 15, 20 & 24.) “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” Winter v. Natural Resources Defense Council, Inc., 129 S. Ct. 365, 374 (2008). This standard replaces the previous tests for preliminary injunctions that had been used in the Ninth Circuit. American Trucking Association v. Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009). Plaintiff’s motions are DENIED because he has failed to show that he is likely to succeed on the merits. Having concluded that Plaintiff has failed to show a likelihood of success on the merits, this Court need not consider whether the plaintiff would suffer irreparable injury. See Guzman v. Shewry, 552F.3d 941, 948 (9th Cir. 2009).

**B. Motion to File Amended Complaint**

Plaintiff has filed a motion “that, the Complaint Filed in Case no. Cv-11-1507 and, all motions and declaration attendant upon that matter be transferred [*sic*] and hered [*sic*] in the instant matter.” (Docket No. 12.) In the alternative, Plaintiff requests that the Court permit him to amend his complaint after he has obtained the documents from Case No. 11-1507. The Court notes that Plaintiff has also filed a “motion to supplement” his complaint. (Docket No. 14.)

A plaintiff may amend the complaint once as a matter of course within 21 days after serving it. Fed. R. Civ. P. 15(a)(1)(A). But if the complaint requires a responsive pleading, a plaintiff may amend the complaint 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier. Id. at (a)(1)(B). In all other cases, a plaintiff must obtain the defendant's consent or leave of court to amend a complaint. Id. at (a)(2).

In the interest of justice and in light of the fact that Defendants have yet to file a responsive pleading in this matter, the Court will grant Plaintiff an opportunity to file an amended complaint to include all the claims he wishes to raise in this instant action. Plaintiff is advised that he should also include all the claims in the amended complaint which he raises in supplemental briefs filed in this matter. (See e.g., Docket Nos. 14 and 21.)

## CONCLUSION

For the foregoing reasons, the Court orders as follows:

1. Plaintiff's motion to file an amended complaint is GRANTED. Plaintiff shall file an amended complaint **no later than thirty (30) days** from the date this order is filed. Plaintiff's motion to supplement his complaint, (Docket No. 14), is DENIED as moot.

The amended complaint must include the caption and civil case number used in this order and the words “AMENDED COMPLAINT” on the first page and write in the case number for this action, Case No. C 11-00287 EJD ( PR). **Because an amended complaint completely replaces the original complaint and any supplements thereto, Plaintiff must include in it all the claims he wishes to present. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Plaintiff may not incorporate material from the original complaint or any supplements thereto by reference.**

Briefing on the original complaint is hereby suspended until the Court conducts an initial review of the amended complaint.

2. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court informed of any change of address by filing a separate paper with the clerk headed "Notice of Change of Address." He must comply with the Court's orders in a timely fashion or ask for an extension of time to do so. Failure to comply may result in the dismissal of this action pursuant to Federal Rule of Civil Procedure 41(b).

The clerk shall enclose two copies of the court's form complaint, and a copy of the

1 Plaintiff's original complaint from Case No. 11-01507 JW (PR), (Docket No. 1), with a  
2 copy of this order to Plaintiff.

3 This order terminates Docket Nos. 12, 14, 15, 20 and 24.

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5 DATED: June 8, 2011

  
6 EDWARD J. DAVILA  
7 United States District Judge

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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

MARCUS R. ELLINGTON,

Case Number: CV11-00287 EJD

Plaintiff,

**CERTIFICATE OF SERVICE**

v.

FOX, et al.,

Defendants.

/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 6/10/2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Marcus R. Ellington E-44837  
CSP-Salinas Valley State Prison  
P.O. Box 1050  
Soledad, CA 93960

Dated: 6/10/2010

Richard W. Wiking, Clerk  
/s/ By: Elizabeth C. Garcia, Deputy Clerk